

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT E. JOHNSON,

Plaintiff,

v.

HAROLD CLARKE *et al.*,

Defendants.

Case No. C05-5401FDB

ORDER REGARDING
PLAINTIFF'S MOTION ON
REQUESTS FOR ADMISSIONS

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff is not proceeding *in forma pauperis* and paid the full filing fee. (Dkt. # 1, receipt # 513451).

The parties are embroiled in a discovery dispute. This is at least the third such dispute in this action. See, (Dkt. # 4, 19, and 23). Plaintiff asks the court to hold that certain requests for admission be deemed admitted without consideration of the objections made by defendants in conjunction with the admissions. He also seeks to strike portions of responses that explain or limit an admission. Finally, he contests one request for admission where a defendant indicates she cannot admit or deny the request. (Dkt. # 31).

The court declines to consider this motion. Local Rule 37 (a)(2) states that there must be a

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1 good faith effort to confer prior to bringing a motion on discovery matters. There is nothing in the
2 plaintiff's motion or defendant's response showing there was any meeting prior to plaintiff's motion
3 being filed. (Dkt. # 31 and 33). The motion will not be considered for that reason.

4 Some guidance may be appropriate at this stage of the proceeding. In his motion plaintiff
5 argues it was improper for defendants to object to several of his requests and at the same time admit
6 the request. (Dkt. # 31) Plaintiff is instructed that Fed. R Civ. P. 33 (b)(4) has some applicability to
7 requests for admissions. It would have been improper for defense counsel to simply object and
8 refuse to admit or deny the request where the objection is relevance or where the request deals with
9 and issue that presents an issue of fact for trial. Where counsel objects and answers the request for
10 admission counsel has properly preserved the objections for a later ruling by the court should the
11 plaintiff seek to enter the admission as evidence.

12 Plaintiff is cautioned that while costs may be awarded if he prevails on a discovery motion
13 under Fed. R. Civ. P. 37 (a)(4)(A), costs may also be awarded if defendants prevail on a motion he
14 brings under Fed. R. Civ. P. 37 (a)(4)(B).

15 The Clerk of Court is directed to send a copy of this Order to plaintiff and to counsel for
16 defendants and to remove (Dkt. # 31) from the court's calendar.

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18 DATED this 22nd day of August, 2006.

19 /S/ J. Kelley Arnold
20 J. Kelley Arnold
21 United States Magistrate Judge
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